

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:05CR50-01  
(STAMP)

VANCE L. BURNS,

Defendant.

**MEMORANDUM OPINION AND REVOCATION ORDER**

On October 21, 2005, defendant, Vance L. Burns, was placed under pretrial release supervision by United States Magistrate Judge James E. Seibert. On February 14, 2006, United States Probation Officer Daniel E. Fugate filed a petition with this Court to order the defendant to appear before this Court to show cause why his pretrial release should not be revoked.

The defendant's pretrial release was subject to standard mandatory conditions that included the following: (1) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. (2) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

The Probation Officer's petition alleges that the defendant violated the condition that he shall not commit any offense in violation of federal, state or local law while on release by driving on a suspended license. Specifically, the Probation Officer alleges that on February 14, 2006 in Benwood, Marshall

County, West Virginia, the defendant was arrested for the offense of driving on a suspended license for DUI.

In addition, the defendant was ordered to appear for a sentencing hearing on February 27, 2006 but failed to appear. Upon failure of the defendant to appear at his sentencing hearing, this Court issued a bench warrant for the defendant's arrest.<sup>1</sup>

On March 24, 2006, the defendant appeared for a sentencing hearing at which time this Court addressed the defendant's violation of his pretrial release and the Probation Officer's petition for action. Defendant and his counsel indicated that they had no objection to this Court considering the defendant's violation of his pretrial release at that time. In addition, the defendant admitted to violating his pretrial release and this Court found by clear and convincing evidence that the defendant had indeed violated his pretrial release by failing to appear for his February 27, 2006 sentencing hearing as ordered by this Court. Because this Court found the defendant violated his pretrial release by not appearing at his sentencing hearing, this Court declined to address whether the defendant had violated his pretrial release by being arrested for driving on a suspended license.

Pursuant to 18 U.S.C. § 3148, a judicial officer "shall enter" an order of revocation and detention if, after a hearing, the judicial officer finds that there is "clear and convincing evidence

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<sup>1</sup>While the Probation Officer did not mention the defendant's failure to appear in his petition, the Probation Officer addressed this violation in a supplement to his presentence report.

that the person has violated any . . . condition of release" and that "the person is unlikely to abide by any condition or combination of conditions of release." 18 U.S.C. § 3148(b)(1)(B) and (b)(2)(B).

As stated above, this Court finds by clear and convincing evidence that the defendant has violated the condition of his pretrial release that he appear at all proceedings as required and not commit any offense in violation of federal, state or local law. Moreover, this Court finds that the defendant is unlikely to abide by any condition or combination of conditions of release. Accordingly, it is ORDERED that pretrial release for the defendant Vance L. Burns be and hereby is REVOKED.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the defendant, to counsel of record herein, to the United States Probation Office and to the United States Marshals Service.

DATED: March 24, 2006

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE